

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ALEXANDER STROSS

Plaintiff,

vs.

**RIVER’S EDGE REALTY, LLC d/b/a
AUSTIN OPTIONS REALTY; DANIEL R.
CASTRO & ALISHA AUSTIN**

Defendant

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CIVIL ACTION # 1:17-cv-391-RP

**PLAINTIFF’S SURREPLY IN OPPOSITION TO DEFENDANTS’ MOTION TO
RECONSIDER ORDER STRIKING COUNTERCLAIMS**

Insisting that they did nothing wrong, and that it was this Court that made an “error,” Defendants have still provided no legal basis for the Court to reconsider its prior order dismissing Defendants’ counterclaims. Incredibly, they claim that Rules 59 and 60 are wholly inapplicable. If so – because the federal rules include no “motion to reconsider” – there apparently is no basis for the Court to reconsider its prior order.

More importantly, Defendants have abusively used their reply to assert arguments in opposition to Plaintiff’s second rule 12(f) motion. The time to do that was on or before July 31, 2017, not now, and Defendants have neither sought, nor obtained, leave of court to file those arguments 6 weeks after the deadline. Worse, the cases cited by Defendants have no application to Plaintiff’s motion to strike, and Defendants have misrepresented Plaintiff’s “burden” on a 12(f) motion seeking dismissal of redundant counterclaims. Plaintiff addressed these issues at length in his reply in support of his first motion to strike. (Doc. 13). Because Defendants are once again attempting to mislead this Court, Plaintiff incorporates his prior reply and the authorities set forth therein. For clarity, Plaintiff does so without waiver of his position that the time for Defendants to address these issues was July – not September – and that the Court has

already properly dismissed Defendants' counterclaims due to their failure to follow the local rules.

Dated this 15th Day of September, 2017

LAW OFFICE OF BUCK MCKINNEY, PC

/s/ R. Buck McKinney

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ATTORNEY FOR PLAINTIFF ALEXANDER STROSS

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties who have appeared in this action.

/s/ R. Buck McKinney